

STATE OF MICHIGAN
COURT OF APPEALS

GENERAL CASUALTY OF WISCONSIN,

Plaintiff-Appellee,

v

SECURA INSURANCE,

Defendant-Appellant.

UNPUBLISHED

October 24, 2006

No. 270457

Macomb Circuit Court

LC No. 05-000477-CK

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

In this priority case between two insurers, defendant appeals as of right the trial court order denying its motion for summary disposition, and granting summary disposition in favor of plaintiff. We affirm. This case is being decided without oral argument under MCR 7.214(E).

The trial court summarized the underlying facts as follows:

[This case] arises out of a lawsuit filed by William Larson on May 23, 2003 in Wayne County Circuit Court against The Children's Place Retail Stores, Inc., Lakeview Construction of Wisconsin ("Lakeview"), and Labor Ready Midwest. In that case, Larson sought damages for personal injuries he received on March 27, 2003 while in the course and scope of his employment as a painter with Mykron Contracting Inc. ("Mykron").

At the time of the injury, Lakeview was the general contractor for work being performed at The Children's Place Retail Stores, Inc., while Mykron was a subcontractor for part of that work. Lakeview was the named insured under a policy issued by plaintiff while Mykron was a named insured under a policy issued by defendant, and Lakeview was named as an additional insured under that policy, pursuant to the requirement in the construction contract between the general contractor and subcontractor. Following the complaint filed by Larson, plaintiff requested defendant participate in the defense of Lakeview, as it was a named additional insured under defendant's policy. After defendant refused, plaintiff participated in settlement negotiations and settled Larson's claim by paying \$675,000.00. Defendant paid nothing and refused to defend and indemnify Lakeview. Plaintiff now seeks damages due to defendant's alleged breach of contract for failure to defend and indemnify.

The trial court concluded that defendant was the primary insurer, and thus breached its duty to defend and indemnify. See *Alyas v Gillard*, 180 Mich App 154, 160; 446 NW2d 610 (1989). The trial court awarded damages, costs, and attorney fees totaling \$747,544.35.

We review de novo a trial court's decision on a motion for summary disposition as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Contract interpretation likewise presents a question of law, which we review de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). Unambiguous contract terms should be given their plain, ordinary meanings. See *Haywood v Fowler*, 190 Mich App 253, 258; 475 NW2d 458 (1991).

The form indicating Mykron's acceptance of Lakeview's terms to do work as the latter's subcontractor included the following provision: "we must have sub's certificate of insurance for liability, with no less than \$500,000 limits and worker's compensation with statutory limits, before any payments will be made. List Lakeview construction as additional insured." At the time, Lakeview was insured by plaintiff under a policy which included a provision rendering that coverage excess where any other primary insurance was available. Mykron was insured by defendant under a policy that included an endorsement with the following provision:

If other valid and collectible insurance is available to the insured for a loss we cover . . . our obligations are limited as follows:

a. Primary Insurance

Where required by a written contract, this insurance is primary as respects any other insurance policy issued to the designated additional insured. Otherwise, b. below applies.

b. Excess Insurance

The trial court reasoned that the subcontracting agreement's provision requiring insurance, and that Lakeview be included as an additional insured, along with defendant's policy's provision that "[w]here required by a written contract, this insurance is primary as respects any other insurance policy issued to the designated additional insured," unambiguously rendered defendant the primary insurer in this instance. We agree.

Defendant points out that although the subcontracting agreement requires the subcontractor to have insurance that includes Lakeview as an additional insured, that agreement does not specify that any such insurance be primary. Defendant argues in turn that the language in its policy, "[w]here required by a written contract, this insurance is primary . . .," does not apply, because specifically primary insurance is not required by the contract. This is a strained interpretation. The introductory clause, "[w]here required by a written contract," modifies what immediately follows, "this insurance"; the words that follow then specify the nature of the insurance in that event. In other words, because "this insurance" was "required by a written contract," it is "primary."

Defendant protests that the trial court "concluded that the contract requirement of listing Lakeview as an additional insured is synonymous with a clause in the Lakeview Contract

mandating that Mykron, the subcontractor, provide Lakeview with primary insurance.” However, this is an exaggeration. In fact, the subcontracting agreement required only that Lakeview be listed in the latter’s insurance as an additional insured; Mykron’s policy with defendant, by its own terms, makes that policy primary in this instance. For these reasons, we reject defendant’s strained reading of those contracts.

Defendant argues that it was relieved of any obligations in the matter by the “excess-escape other-insurance clause” in its noncontributory endorsement. But this argument depends entirely upon defendant’s avoiding primary responsibility in the first instance. Defendant’s policy with Mykron listing Lakeview as an additional insured, elevated its coverage of the latter to primary status by its own terms. Accordingly, we deem the policy’s excess or escape provisions inapplicable, and need not consult them.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens